

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to:

"Commissioner for Patents"  
P.O. Box 1450  
Alexandria, VA 22313-1450

on MARCH 23, 2004

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Reg. No. 28,617  
Attorney for Applicant(s)

3/23/04  
Date of  
Signature

**F7605(V)**  
**01-0485-UNI**

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Customer Number: 000201

**Attorney Docket No.: F7605(V)**

Applicant: Floeter et al.

Serial No.: 10/045,405

Filed: November 20, 2001

FOR: EDIBLE SPREAD CONTAINING A NATURAL FAT PHASE

UNUS No.: 01-0485-UNI

Group: 1761

Examiner: Carolyn A. Paden

Edgewater, New Jersey 07020

March 23, 2004

**RESPONSE**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

The following comments are in response to an Office Action mailed March 9, 2004. These comments are intended to advance the case to issue without delay.

Claims 1-12 were rejected under 35 U.S.C. § 103(a) as unpatentable over Lomneth et al. in view of Adomako and Sagi taken together. Applicants traverse this rejection.

Applicants submitted a Declaration under Rule 132 acknowledged by return postcard as received in the USPTO March 3, 2004. Evidently the Declaration was not sufficiently quickly matched to the file allowing the Examiner opportunity to consider same. It is now requested that the Examiner consider the Declaration. Therein Dr. Floeter reported on comparative experiments against Lomneth et al., the primary reference. These experiments show that products containing Allanblackia fat have at increasing temperature a sharp drop in product hardness. The drop provides an excellent mouthfeel when assessed by an expert panel. The sharp drop of hardness indicates relatively low levels of tri-saturated triacylglycerols at temperatures just below mouth temperature. These characteristics result in a clearly superior organoleptical effect relative to prior art products prepared with fat blends based on palm mid fractions, such as those of Lomneth.

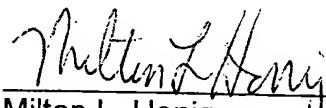
The control experiments containing the Lomneth fat blends A1 and A2 were spreads prone to development of graininess. This effect is manifested on storage through growth of grainy fat agglomerates up to a size of 2 mm. Graininess did not appear in the spread products formulated with Allanblackia fats.

Based on these performance differences, it would not have been obvious that an improved edible emulsion spread could be achieved by Allanblackia or Pentadesma fats by reliance on the teachings of Lomneth.

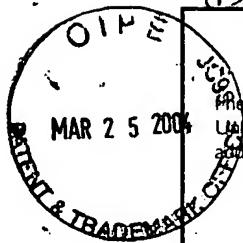
Applicants note that the Examiner on Form PTOL-326 indicated the Office Action of March 9, 2004 was a Final Action. The Examiner is requested to withdraw finality of that Action. Applicants submitted a Preliminary Amendment with the RCE filing. By itself, the Preliminary Amendment should have been sufficient to prevent the first Action from being Final. Secondly, submittal and receipt by the USPTO of the Declaration six days prior to mailing of the Office Action should also have prevented finality. The Examiner is requested to withdraw finality of the first Office Action.

In view of the foregoing comments and Declaration, applicants request the Examiner to reconsider the rejection and now allow the claims.

Respectfully submitted,

  
\_\_\_\_\_  
Milton L. Honig  
Registration No. 28,617  
Attorney for Applicant(s)

MLH/sm  
(201) 840-2403



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UNITED STATES DEPT. OF COMMERCE  
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Commissioner for Patents  
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Alexandria, VA 22313-1450

Sir:

Transmitted herewith is a **RESPONSE** in the above-identified application.  
 No additional fee is required.

The fee has been calculated as shown below.

CLAIMS AS AMENDED

	(2) * Claims Remaining After Amendment		(4)** Highest No. Previously Paid For	(5) Present Extra	(6) Rate	(7) Additional Fee
Total Claims		Minus			\$ 18.00	
Independent Claims		Minus			\$ 84.00	
Multiple Claims					\$ 280.00	
TOTAL ADDITIONAL FEE FOR THIS AMENDMENT						\$

\*If the entry in Column (2) is less than the entry in Column (4), write "0" in Column (5).

\*\*If the "Highest No. Previously Paid For" is less than "20," write "20" in this space.

Charge \$\_\_\_\_\_ to Deposit Acct. #12-1155. Triplicate copies of this letter are enclosed.  
 The Commissioner is hereby authorized to charge any additional fees, which may be required to our deposit account No. 12-1155, including all required fees under  
 37 C.F.R. § 1.16;  
 37 C.F.R. § 1.17;  
 37 C.F.R. § 1.18.

Triplicate copies of this letter are enclosed.

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(201) 840-2403

*Milton L. Honig*  
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Reg. #28,617